

# ARKANSAS COURT OF APPEALS

DIVISION III  
No. CACR07-278

BRYAN KEITH RAKESTRAW  
APPELLANT

V.

STATE OF ARKANSAS  
APPELLEE

**Opinion Delivered** January 14, 2009

APPEAL FROM THE CRITTENDEN  
COUNTY CIRCUIT COURT,  
[NO. CR-2002-497]

HONORABLE DAVID N. LASER,  
JUDGE

AFFIRMED; MOTION TO  
WITHDRAW GRANTED

### LARRY D. VAUGHT, Chief Judge

On December 7, 2006, the Crittenden County Circuit Court revoked the suspended imposition of sentence of Bryan Keith Rakestraw. His attorney has filed a motion to withdraw as counsel, accompanied by a brief, arguing that an appeal would be frivolous. After reviewing the record, we conclude that an appeal in this case would be wholly without merit; accordingly, we affirm the revocation and grant counsel’s motion to withdraw.

On October 23, 2002, Rakestraw pled guilty to possession of a controlled substance and received a forty-eight month suspended sentence. In October 2006, the State filed a revocation petition, alleging that Rakestraw had violated the conditions of his suspension. After a hearing, the trial court granted the State’s petition, finding that Rakestraw had failed to pay his fines and costs, possessed instruments of crime, and possessed methamphetamine. Rakestraw was sentenced to forty-eight months’ imprisonment.

Pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Arkansas Supreme Court Rule 4-3(j), Rakestraw’s counsel filed a motion to withdraw, contending that an appeal was wholly without merit. In an unpublished opinion, *Rakestraw v. State*, CACR 07-278 (Ark. App. Jan. 16, 2008), we held that Rakestraw’s counsel’s brief was noncompliant, and we ordered rebriefing. Before us now is Rakestraw’s counsel’s second no-merit brief and motion to be relieved as counsel.<sup>1</sup> The State filed no responsive brief.

Rakestraw’s counsel argues, and our review of the record confirms, that there were only three rulings adverse to Rakestraw—two evidentiary rulings and the revocation of his suspended sentence. We agree with Rakestraw’s counsel that the trial court did not abuse its discretion as it relates to the evidentiary rulings and that the trial court did not err in concluding that a preponderance of the evidence supported the revocation. Therefore, we hold that an appeal from the trial court’s revocation determination would be wholly without merit. Accordingly, we affirm the trial court’s revocation and grant counsel’s motion to be relieved.

Finally, while Rakestraw did not file pro se points on appeal after his counsel filed the second no-merit brief and motion to be relieved, Rakestraw did file a pro se notice of appeal listing two points for reversal. The first point was that he was entitled to jail credit of at least sixty-one days, and the second was that his counsel was ineffective. Neither of these

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<sup>1</sup>The clerk of this court mailed Rakestraw a copy of his counsel’s second brief and motion and attempted to notify him of his right to file a pro se statement of points for reversal. However, the documents were returned to the clerk’s office marked, “Unclaimed,” with the notation that the post office had made three unsuccessful attempts to deliver them.

arguments were raised below. Parties may not change their argument on appeal and are limited to the scope and nature of the arguments made below. *Hunter v. State*, 330 Ark. 198, 952 S.W.2d 145 (1997); *see also Hadley v. State*, 322 Ark. 472, 910 S.W.2d 675 (1995) (holding that claims of ineffective assistance of counsel are not cognizable on appeal unless specifically raised below). As such, we do not consider Rakestraw's points.

Affirmed; motion to withdraw granted.

ROBBINS and MARSHALL, JJ., agree.